



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Title: "Automated Location-Based Disruption Recovery And Surrogate Selection Service"
Applicants: James H. Kaufman, et al.
Attorney Docket No.: ARC920010013US1

Serial No.: 09/903,360	Examiner: Scott L. Jarrett
Filed: July 10, 2001	Art Unit: 3623

Board of Patent Appeals and Interferences
Commissioner for Patents
P.O.Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This appeal brief is submitted under 35 U.S.C. §134. This appeal is further to Appellants' Notice of Appeal that is attached hereto.

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(1) Real Party in Interest

The real party in interest is International Business Machines Corporation.

(2) Related Appeals and Interferences

No other appeals or interferences exist that relate to the present application or appeal.

(3) Status of Claims

Claims 1-4, 6-13, 19-24, 26, and 29-30 are pending and remain in the application. In the Final Office Action of December 7, 2005:

- Claims 21-22, 26 and 30 are objected to for containing certain informalities.
- Claims 1, 8, 10, 12, 19, 26 and 30 are rejected under 35 U.S.C. 112, second paragraph.
- Claims 1, 8-11, 19-23, 24, 26 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876.
- Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876 as applied to claims 1, 8-11, 19-23, 24, 26 and 29-30, and further in view of Lockwood et al., U.S. Patent No. 6,694,234.
- Claims 6-7 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876 as applied to claims 1, 8-11, 19-23, 24, 26 and 29-30, and further in view of Suman et al., U.S. Patent No. 6,028,537.

(4) Status of Amendments

There is currently no pending amendment.

(5) Summary of Claimed Subject Matter

The present invention relates in general to event-driven automated notification system and associated method for obtaining services, or surrogates in response to a disruption of a normal chain of events. (*Page 1, lines 9 - 16*).

5.1. Summary of the subject matter of independent claim 1

The present invention is exemplified by independent claim 1, according to which a processor-implemented method 500 (*FIG. 6A and 6B*) automatically assists a user recover from an unexpected disruption of service, upon receiving a user request for assistance. (*Page 1, lines 9 - 16*). Once the user request is received, a surrogate interface 530 retrieves a list of candidate helpers (*Page 8, lines 11-16*); (*Page 16, lines 25-30*); *FIG. 5*; and step 615 of *FIG. 6A*.

The present method 500 then automatically determines the user's current location. (*Page 17, lines 1-3*); and steps 535 and 600 of *FIG. 6A*. For each candidate helper, a calendar interface, a location interface, a profile interface, and a status interface automatically determine the following: current location, capability, suitability, and calendar events for each candidate helper. (*Page 8, lines 1-9*); (*Page 16, line 25 - Page 17, line 3*); and steps 615, 620 of *FIG. 6B*.

Based on the calendar events, method 500 automatically projects a physical location of each candidate helper, at a projected assistance period, for rendering service to the user. (*Page 16, line 18 - Page 17, line 3*) and step 625 of FIG. 6B. If the projected physical location for each candidate helper is determined to be suitable, method 500 further determines other obligations for the candidate helper under consideration, during the assistance period. (*Page 17, line 25 - Page 18, line 19*) and step 705 of FIG. 6C.

If the other obligations of the candidate helper under consideration are determined to be acceptable, method 500 automatically dispatches one or more candidate helpers from the list of candidate helpers. (*Page 18, line 28 - Page 19, line 4*) and step 735 of FIG. 6C.

The present method 500 does not limit the selection of the helper to his/her distance from the user, but rather selects, schedules, and dispatches helpers based on time-sensitivity, location information, and conflict / situation definition, in other terms on calendar events and situations of the candidate helpers. (*Page 3, lines 5-7*); (*Page 6, line 28 - Page 7, line 3*); (*Page 7, line 24 - Page 8, line 9*).

5.2. Summary of the subject matter of independent claim 19

While claim 1 exemplifies the present invention in connection with a method for automatically assisting a user recover from an unexpected disruption of service disruption system, claim 19 corresponds to claim 1, and exemplifies the present invention in connection with a system for automatically assisting a user recover from an unexpected disruption of service.

5.3. Summary of the subject matter of independent claim 26

While claim 1 exemplifies the present invention in connection with a method for automatically assisting a user recover from an unexpected disruption of service disruption system, claim 26 corresponds to claim 1, and exemplifies the present invention in connection with a computer program product for automatically assisting a user recover from an unexpected disruption of service.

(6) Grounds of Rejection to be Reviewed on Appeal

Appellant respectfully traverses the following grounds of objection and rejection and request that they be reviewed on appeal:

6.1. First Ground of Objection

- Claims 21-22, 26 and 30 stand objected to for containing certain informalities.

6.2. Second Ground of Rejection

- Claims 1, 8, 10, 12, 19, 26 and 30 stand rejected under 35 U.S.C. 112, second paragraph.

6.3. Third Ground of Rejection

- Claims 1, 8-11, 19-23, 24, 26 and 29-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876.

6.4. Fourth Ground of Rejection

- Claims 2-4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876 as applied to claims 1, 8-11, 19-23, 24, 26 and 29-30, and further in view of Lockwood et al., U.S. Patent No. 6,694,234.

6.5. Fifth Ground of Rejection

- Claims 6-7 and 12-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876 as applied to claims 1, 8-11, 19-23, 24, 26 and 29-30, and further in view of Suman et al., U.S. Patent No. 6,028,537.

(7) Arguments

7.1. Argument Responding to the First Ground of Rejection

Claims 21-22, 26, and 30 stand objected to for containing certain informalities, on the ground that claims 21-22 utilize the acronym GPS instead of the intended global positioning system. Examiner suggested that Applicants amend one or both claims to clearly identify the acronym GPS. Due to the advanced stage of prosecution of the current application and the initiation of the appeal process, Applicants respectfully submit that the amendment of claims 21 and/or 22 is not necessary, particularly that the term GPS is quite well known and commonly used more so than the expanded terms.

Regarding Claim 26, the Examiner indicates that claim 26 appears to be missing spaces between several of the words for example "computerprogramproduct" instead of the intended computer program product. Applicants respectfully submit that no such spaces are missing from the claim 26, and thus no amendment to claim 26 is needed.

Regarding Claim 30, the Examiner indicates that claim 30 appears to intend to recite "further comprising a user module for...". Applicants thank the Examiner for indicating this error, and would like to point out that it is claim 29 (not claim 30) that is missing the term "module". Applicants have amended claim 29 accordingly and request that this correction be entered.

7.2. Argument Responding to the Second Ground of Rejection

Claims 1, 8, 10, 12, 19, 26, and 30 stand rejected under 35 U.S.C. 112, second paragraph. Regarding Claims 1, 19, and 26 the Examiner indicates that the disclosure does not clearly define the phrases "suitable" or "acceptable" with regard to determining the suitability/acceptability of a candidate helper. The phrases suitable and/or acceptable encompass a wide range of varying definitions and without further definition, these phrases are vague and indefinite. The Examiner interpreted the phrases "suitable" and "acceptable" to mean any candidate help that meets or exhibits any condition, parameter and/or constraint for the purposes of examination.

Applicants respectfully traverse this rejection ground and submit that, regarding the term "suitability", Applicants request that this term be interpreted in its common usage, that is "of the right type or quality for a particular purpose or occasion" (definition provided by Microsoft Office). Similarly, Applicants request that the term "acceptable" be interpreted in its common usage, that is "considered to be satisfactory" (definition provided by Microsoft Office).

Regarding claims 8, 10, and 12 the Examiner indicates that claims 8, 10, and 12 recite the limitation "sending the notification of the service disruption" in 1, and that there is insufficient antecedent basis for this limitation in the claim. Examiner interpreted the claim to read "the user's request for assistance comprises a transportation request" for the purposes of examination. Applicants thank the Examiner for pointing out this error.

Applicants have amended claims 8, 10, and 12 according to the Examiner's interpretation and request that this amendment be entered.

The objection/rejection of claims 29 or 30 has been addressed earlier in the prior section 7.1.

7.3. Argument Responding to the Third Ground of Rejection

7.3.1. The Rejection

Claims 1, 8-11, 19-23, 24, 26 and 29-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876, hereinafter "O'Meara".

Appellant respectfully submits that O'Meara does not disclose all the elements and limitations of the rejected claims (the invention as a whole). Consequently, the claims presently on file are not obvious in view of O'Meara. In support of this position, Appellant submits the following arguments:

7.3.2. Legal Standard of Obviousness

The following legal authorities set the general legal standards in support of Appellant's position of non obviousness, with emphasis added for added clarity:

- MPEP 706.02(j), "**To establish a prima facie case of obviousness, three basic criteria must be met.** First, there must be some suggestion or motivation, either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Appellant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) ... The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985)."

- In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. The prior art perceived a need for mechanisms to dampen resonance, whereas the inventor eliminated the need for dampening via the one-piece gapless support structure. "Because that insight was contrary to the understandings and expectations of the art, the structure effectuating it would not have been obvious to those skilled in the art." 713 F.2d at 785, 218 USPQ at 700 (citations omitted).
- MPEP §2143.03, "All Claim Limitations Must Be Taught or Suggested: To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)."
- MPEP §2143.01, "The Prior Art Must Suggest The Desirability Of The Claimed Invention: There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill

in the art." *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) (The combination of the references taught every element of the claimed invention, however without a motivation to combine, a rejection based on a prima facie case of obvious was held improper.). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

- "Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1598 (citing *ACS Hosp. Sys. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984)). What a reference teaches and whether it teaches toward or away from the claimed invention are questions of fact. See *Raytheon Co. v. Roper Corp.*, 724 F.2d 951, 960-61, 220 USPQ 592, 599-600 (Fed. Cir. 1983), cert. denied, 469 U.S. 835, 83 L. Ed. 2d 69, 105 S. Ct. 127 (1984). "
- "When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references. See *In re Geiger*, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987)." Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See MPEP 2143.01; *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).
- "With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience -- or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings." See *In re Zurko*, 258 F.3d 1379 (Fed. Cir. 2001).
- "We have noted that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see *Pro-Mold & Tool Co. v. Great*

Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), Para-Ordinance Mfg. v. SGS Imports Intern., Inc., 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995), although "the suggestion more often comes from the teachings of the pertinent references," Rouffet, 149 F.3d at 1355, 47 USPQ2d at 1456. The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. See, e.g., C.R. Bard, 157 F.3d at 1352, 48 USPQ2d at 1232. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence." E.g., McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) ("Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact."); In re Sichert, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977)." See In re Dembicza, 175 F.3d 994 (Fed. Cir. 1999).

- "To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed." See In re Rouffet, 149, F.3d 1350 (Fed. Cir. 1998).
- The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992) (flexible landscape edging device which is conformable to a ground surface of varying slope not suggested by combination of prior art references).
- If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

7.3.3. Application of the Obviousness Standard to the Present Invention

The Examiner bases the rejection of claim 1, at least in part on the following grounds:

"Regarding Claims 1, 19 and 26 O'Meara et al., teach a system and method for scheduling and allocating location/time specific user requests for assistance (assignments, orders, tasks, etc.) to acceptable and/or suitable candidate helpers (mobile agents, personnel, service providers, etc.) wherein a helper's suitability/acceptability is based on a one or more parameters/conditions including but not limited to: availability, future scheduled events (calendar of events), location and time the helper is expected to be free/available, the distance from the service provider to the requested service, helper skill set, journey time and the like ("Suitability of agent is dependent on location and time of availability", Paragraph 0015; Paragraphs 0016, 0027, 0029-0030, 0045-0050, 0099, 0113, 0117, 0138-0141; Figures 7, 9)."

Appellants respectfully submit that while O'Meara describes the location based service, it does not combine the location based service with the calendaring events, as recited in claim 1. More specifically, the Examiner resorts to paragraph (0016) of O'Meara in support of the Examiner's position that O'Meara describes future scheduled events (calendar of events),

In response, Appellants reproduces paragraph (0016) of O'Meara, with emphasis added:

"(0016) Thus, when an order is received, it is not necessary to query each agent in advance as to the final location of that agent and then arrive at a value judgement as to which agent will be able to reach the customer first. Instead, the location details of the order can simply be compared with the position of that location in the prioritised listing for each agent to identify the agent who can reach the customer earliest. This improves customer service levels, and reduces the detailed local knowledge normally required for dispatching positions."

It is clear that O'Meara does not teach the use of calendar events to automatically project the physical location of each candidate helper, at a projected assistance period, for rendering service to the user, as recited in claim 1. When analyzing the instant claims it is important to correlate the calendar events to the projected physical location and the projected assistance period.

O'Meara also does not describe if the projected physical location that is based on the calendar events for each candidate helper is determined to be suitable, then determining other obligations for each candidate helper during the assistance period that is based on the calendar events. The instant claim 1 teaches the use of calendar events and also the consideration of the helpers' other obligations that may affect the proper rendition of the service to the user.

The foregoing features are not clearly taught by O'Meara. Therefore, claim 1 and the claims dependent thereon are allowable, and such allowance is respectfully requested. In addition, with respect to the dependent claims, Appellants does not assert each individual feature independently in the abstract, but rather in combination with the elements and features of claim 1.

Independent claims 19 and 26 are also allowable for reciting generally similar elements and limitations to those of claim 1. As a result, claims 19 and 26 and the claims dependent thereon are allowable and such allowance is respectfully requested.

7.4. Argument Responding to the Fourth Ground of Rejection

Claims 2-4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876 as applied to claims 1, 8-11, 19-23, 24, 26 and 29-30, and further in view of Lockwood et al., U.S. Patent No. 6,694,234.

Applicants respectfully submit that claims 2-4 are allowable for depending on the allowable claim 1, as presented earlier.

7.5. Argument Responding to the Fifth Ground of Rejection

Claims 6-7 and 12-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. O'Meara et al., Patent Publication No. 2002/0077876 as applied to claims 1, 8-11, 19-23, 24, 26 and 29-30, and further in view of Suman et al., U.S. Patent No. 6,028,537.

Applicants respectfully submit that claims 6-7 and 12-13 are allowable for depending on the allowable claim 1, as presented earlier.

Respectfully submitted,

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APPENDIX A
CLAIMS ON APPEAL

1. A processor-implemented method to automatically assist a user recover from an unexpected disruption of service, upon receiving a user request for assistance, comprising:
 - a surrogate interface retrieving a list of candidate helpers;
 - automatically determining the user's current location;
 - wherein for each candidate helper, a calendar interface, a location interface, a profile interface, and a status interface automatically determining the following: current location, capability, suitability, and calendar events for each candidate helper;
 - based on the calendar events, automatically projecting a physical location of each candidate helper, at a projected assistance period, for rendering service to the user;
 - if the projected physical location for each candidate helper is determined to be suitable, further determining other obligations for said each candidate helper during the assistance period; and
 - wherein if the other obligations of said each candidate helper are determined to be acceptable, automatically dispatching one or more candidate helpers from the list of candidate helpers.
2. The method of claim 1, further including sending the list of candidate helpers to the user.
3. The method of claim 2, further including the user selecting the one or more candidate helpers to be automatically dispatched.

4. The method of claim 3, further including determining the user's location for a future task; and
accounting for the user's location for a future task in preparing the list of candidate helpers.
5. (Canceled)
6. The method of claim 1, wherein the user' request for assistance comprises an emergency request.
7. The method of claim 6, further including executing an emergency request routine in response to the emergency request.
8. (Currently amended) The method of claim 1, wherein sending ~~the notification of the service disruption~~ user request for assistance includes sending a transportation request.
9. The method of claim 8, further including executing a transportation request routine in response to the transportation request.
10. (Currently amended) The method of claim 1, wherein sending ~~the notification of the service disruption~~ user request for assistance includes sending a technical assistance request.
11. The method of claim 10, further including executing a technical assistance routine in response to the technical assistance request.

12. (Currently amended) The method of claim 1, wherein sending ~~the notification of the service disruption~~ user request for assistance includes sending an information resource request.

13. The method of claim 12, further including executing an information resource routine in response to the information resource request.

14 - 18 (Canceled)

19. A processor-implemented service disruption system that automatically assists a user recover from an unexpected disruption of service, upon receiving a user request for assistance, comprising:

a surrogate interface for retrieving a list of candidate helpers;
a server module that automatically determines the user's current location;

wherein for each candidate helper, a calendar interface, a location interface, a profile interface, and a status interface automatically determine the following: current location, capability, suitability, and calendar events for each candidate helper;

based on the calendar events, automatically projecting a physical location of each candidate helper, at a projected assistance period, for rendering service to the user;

if the projected physical location for each candidate helper is determined to be suitable, a server module determines other obligations for said each candidate helper during the assistance period; and

wherein if the other obligations of said each candidate helper are determined to be acceptable, the server module automatically

transmitting a request for assistance to one or more candidate helpers' modules from the list of candidate helpers.

20. The service disruption system of claim 19, further comprising a user module for transmitting the user request for assistance.

21. The service disruption system of claim 20, wherein the user module further includes a GPS interface.

22. The service disruption system of claim 20, wherein at least one of the candidate helpers' modules includes a substitute session manager and a GPS interface.

23. The service disruption system of claim 20, wherein the server module includes a plurality of server information interfaces.

24. The service disruption system of claim 23, wherein the server module further includes a plurality of server information databases.

25. (Cancelled)

26. A computer program product having executable program codes stored on a computer-readable medium, that automatically assists a user recover from an unexpected disruption of service, upon receiving a user request for assistance, comprising:

a program code for retrieving a list of candidate helpers;

a program code for automatically determining the user's current location;

wherein for each candidate helper, a program code automatically determines the following: current location, capability, suitability, and calendar events for each candidate helper;

based on the calendar events, a program code automatically projects a physical location of each candidate helper, at a projected assistance period, for rendering service to the user;

if the projected physical location for each candidate helper is determined to be suitable, a program code determines other obligations for said each candidate helper during the assistance period; and

wherein if the other obligations of said each candidate helper are determined to be acceptable, a program code automatically transmits a request for assistance to one or more candidate helpers from the list of candidate helpers.

27 - 28. (Canceled)

29. (Currently amended) The computer program product of claim 26 further comprising a user module for transmitting the user request for assistance.

30. The computer program product of claim 29, wherein the user module further includes a GPS interface.